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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN 01 237 53754 Office: NEBRASKA SERVICE CENTER Date: FEB 28 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER: [redacted] entifying data deleted to event clearly unwarrante vasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an engineering and operational consulting service. It seeks to employ the beneficiary temporarily in the United States as its managing director. The service center director determined that the petitioner had not established that a qualifying relationship exists between the U.S. entity and the beneficiary's foreign employer.

On appeal, counsel asserts that a qualifying relationship does exist and states that the beneficiary has control over the U.S. operation.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

At issue in this proceeding is whether a qualifying relationship exists between the U.S. petitioner and a foreign entity.

8 C.F.R. 214.2(l)(1)(ii)(G) states:

> *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch,

affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(l)(1)(ii)(I) states:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. 214.2(l)(1)(ii)(J) states:

Branch means an operation division or office of the same organization housed in a different location.

8 C.F.R. 214.2(l)(1)(ii)(K) states:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

8 C.F.R. 214.2(l)(1)(ii)(L) states, in pertinent part:

Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petition indicates that the U.S. entity is a subsidiary of FTM Solutions, Ltd. The petitioner claims in the petition that the foreign entity is owned by three individuals, one of whom is the beneficiary who is claimed to own 80% of the ownership interest. The petitioner further indicates that it, like its foreign

counterpart is also owned by three individuals. However, the ownership interest of the U.S. entity is split into thirds, giving the beneficiary an equal interest as that owned by his partners.

On September 14, 2001, the Service issued a request for additional evidence, instructing the petitioner to submit evidence to establish common ownership and control between the U.S. and foreign entities.

In response to the above request, the petitioner submitted a written explanation reiterating the information previously provided in support of the petition. The petitioner specified that the beneficiary owns 160 of the total 180 shares of stock issued by the foreign entity. The petitioner also specified that the beneficiary is the sole member of its board of directors.

The director denied the petition, stating that the beneficiary has equal ownership interests in the petitioning entity and can therefore be removed from his position on the board of directors by the other two owners. The director concluded that the petitioner failed to establish that the beneficiary has "effective control" over the U.S. entity.

On appeal, counsel asserts that the beneficiary does have effective control over the petitioning entity and submits a brief describing a material change that has transpired in the ownership of the petitioning entity's stock since the denial of the petition was issued. However, 8 C.F.R. 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." Matter of Michelin Tire, 17 I&N Dec. 248 (Reg. Comm. 1978). The information submitted on appeal does not demonstrate that the beneficiary owned 66% of the U.S. entity's stock at the time the petition was filed. Accordingly, the petitioner has submitted insufficient evidence to establish that there was a qualifying affiliate relationship between the U.S. and foreign entities at the time the petition was filed. For this reason, the petition may not be approved.

Furthermore, while not directly noted in the director's decision, even if the Service were to consider the change in ownership of the petitioner's stock, the record nevertheless lacks evidence of a qualifying relationship as defined in the above definitions of parent, branch, subsidiary, and affiliate. See 8 C.F.R. 214.2(l)(1)(ii)(I), (J), (K), and (L). The petitioner claims to be a subsidiary of a foreign operation. By definition, a subsidiary is an entity that is owned by another entity, not directly by an individual as is true in the case at hand. Therefore, the petitioner is clearly not a subsidiary of a foreign entity. Nor does the petitioner fit under the regulatory definition of

affiliate which would require that the petitioner and the foreign entity either be owned by a common parent, which they are not, or that they each be owned by the same group of individuals with each individual owning and controlling similar portions of each entity. As the beneficiary has 80% controlling interest in the foreign entity, while owning only 33% of the petitioning entity at the time of the filing of the petition, the two entities are not affiliates. Thus, as previously stated, the record lacks evidence of a qualifying relationship between a foreign entity and U.S. petitioner.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.